

Claimant had worked for respondent, putting books in boxes, for eight and a half years when he began developing problems in his right ring finger. Claimant was referred to board certified plastic and reconstructive surgeon Marc R. Baraban, M.D., for treatment. Dr. Baraban examined claimant's ring finger, finding claimant had developed a stenosing tenosynovitis. Claimant underwent a release of the finger on June 9, 2003. Claimant was

returned to work with restrictions. Dr. Baraban continued providing conservative care. In his September 15, 2003 letter, Dr. Baraban advised respondent's insurance company that during claimant's most recent examination, Dr. Baraban had found no permanent impairment to claimant's right ring finger, with the surgery creating a surprisingly good result.

Claimant returned to Dr. Baraban on October 9, 2003, at which time Dr. Baraban found claimant's ring finger to have a full range of motion, although there was some tightness and a minimal amount of pain. There was no indication in Dr. Baraban's October 9, 2003 report of any difficulties with claimant's little finger. Claimant did, however, allege that his entire hand was swelled, which Dr. Baraban treated with over-the-counter Ibuprofen.

Claimant was referred by his attorney to board certified plastic surgeon Lynn D. Ketchum, M.D., for an examination on March 16, 2004. At that time, Dr. Ketchum found claimant to have difficulties in his little finger, with a restricted range of motion of the right ring finger and the right little finger. Dr. Ketchum diagnosed claimant with stenosing tenosynovitis of the flexor tendons of the right little finger at the A1 pulley. In his report, Dr. Ketchum indicated that claimant's little finger problems developed in October of 2003, with progression to the point where claimant could not passively straighten out the little finger. He also found crepitus and pain over the A1 pulley upon examination. He recommended surgery to release the little finger.

Claimant returned to Dr. Baraban on June 25, 2004, for an examination. At that time, Dr. Baraban found claimant's little finger to be nearly fixed in flexion in his palm. The finger could not be extended passively, as it caused claimant pain. Dr. Baraban also diagnosed relatively severe stenosing tenosynovitis of the small finger, although he made note of the fact that at the October 9, 2003 examination, there was no stenosing tenosynovitis present in the little finger, nor did claimant have any complaints referable to the little finger at that time. Dr. Baraban was unable to say that claimant's little finger difficulties were related to any work activities performed for respondent.

Due to the conflicting opinions between the doctors, the ALJ determined that an independent medical examination would be appropriate in this instance. Claimant was referred by the ALJ to board certified orthopedic surgeon Phillip L. Baker, M.D., for an examination on September 14, 2004. Dr. Baker was provided with the medical reports from Dr. Ketchum and from Dr. Baraban's treatment of the ring finger and the October 9, 2003 examination of the hand. Dr. Baker made note of the fact that Dr. Baraban found no obvious abnormalities at that time, although he noted claimant raised the inflammatory problem, which was treated with Ibuprofen. Dr. Baker also was provided the June 25, 2004 letter by Dr. Baraban, reporting that there were no abnormalities in the little finger at the time of the October 9, 2003 examination.

Dr. Baker affirmed the diagnosis of a stenosed fifth finger on the right hand causing the finger to be pulled in a semi-flexed position. He also agreed that the treatment appropriate for this condition is an A1 pulley release and possible release of the tenosynovium in the region of the A1 pulley.

Dr. Baker was asked specifically whether this condition was related to claimant's work. He opined that claimant has a basic underlying inflammatory process that has affected both arms and one elbow at present. This diagnosis was made based upon x-rays obtained of the hands, which revealed that claimant is developing DIP joint narrowing of the fingers on the right and left hands, destructive changes at the DIP joint of the fifth finger of the left hand, with narrowing of the joints of the DIP joints of the long, index and ring fingers of the right hand, and some indication that the PIP joints of the right hand are beginning to show some joint space narrowing.

Dr. Baker went onto state that in his opinion, the difficulties with claimant's right little finger are not related to work activities performed by claimant with respondent. He found no logical reason to determine any relationship between claimant's developing right hand difficulties and the work performed through September 11, 2003. He found claimant to have an underlying inflammatory process. He also noted an incidental finding that claimant's left arm showed joint effusion at the time of the MRI done on the left elbow, which he considered to be further indication that claimant was suffering from a type of inflammatory arthropathy.

In a September 30, 2004 letter to claimant's attorney, Dr. Ketchum disagreed with Dr. Baker's evaluation of claimant's condition, finding it inconceivable that this condition could begin within one month of claimant's last day of employment and not be work related.

Dr. Ketchum did examine claimant again on December 29, 2004, at which time he found claimant to be improved, with the locking occurring only occasionally, although claimant still had tenderness at the A1 pulley and crepitus still existed. Claimant did note that when he used his hands a lot, such as when raking leaves, the right hand would swell at night. Dr. Ketchum continued to recommend the release of the A1 pulley.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

The ALJ determined, based upon the opinions of both Dr. Baraban and Dr. Baker, that claimant's condition in his right little finger was not related to his employment with respondent. After reviewing the medical evidence, the Board agrees with that assessment.

¹ K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508(g).

The conflict between Dr. Baraban and Dr. Ketchum, in part, deals with when the condition developed. Dr. Baraban's indication that, at the October 9, 2003 examination, claimant did not have the condition in his little finger and made no complaints of the little finger is persuasive to the Board. Additionally, Dr. Baker's evaluation of the condition and his opinion that it is not related to claimant's ongoing employment provide additional support for the Board's determination to affirm the ALJ in this matter. The Board, therefore, finds that claimant has failed to prove that his ongoing condition is related to his employment with respondent and, therefore, the denial of benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Brad E. Avery dated January 28, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2005.

BOARD MEMBER

c: Beth Regier Foerster, Attorney for Claimant
Christina R. Madrigal, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director